

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
JUL 17 AM 11:51

U.S. DISTRICT COURT
DISTRICT OF MASS

-----X
PENNY LETENDRE,

PLAINTIFF,

C.A. NO 05-CV-10656MLW

v.

MIN S. AHN, M.D., and JANE DOE, and
MIN S. AHN M.D., P.C., d/b/a
THE AESTHETIC WELLNESS CENTER

DEFENDANTS
-----X

**MEMORANDUM OF LAW OF DEFENDANTS MIN S. AHN, M.D., and
MIN S. AHN, M.D., P.C. d/b/a THE AESTHETIC WELLNESS CENTER IN
SUPPORT OF THEIR MOTION TO CONVENE A MEDICAL MALPRACTICE
TRIBUNAL PURSUANT TO M.G.L. 231 § 60B**

The Defendants Min S. Ahn, M.D., and Min S. Ahn, M.D., P.C., by counsel, respectfully request that this Court convene a Medical Malpractice Tribunal as soon as possible. As grounds for this Request, the Defendant Min S. Ahn, by counsel, states that the allegations as against him are in medical malpractice; that he is a licensed health care provider as defined by G.L. c. 231, §60B; and as such he has a statutory entitlement to a tribunal within 15 days of filing his Answer.

An Answer was filed in this matter on July 20, 2004. To date, a tribunal has not yet been convened. A request that a Medical Malpractice Tribunal be convened was included in the Defendants' Answer.

This matter was originally filed in the Federal District Court for the District of Rhode Island. The defendants subsequently filed a Motion to Dismiss and/or Transfer this case to Massachusetts as a result of a lack of minimum contacts between the

Letendre v. Min S. Ahn, M.D.
Request of Defendant Min S. Ahn, M.D. for
Medical Malpractice Tribunal

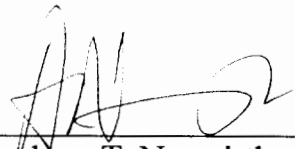
2

Defendants and Rhode Island for purposes of personal jurisdiction. The District Court granted Defendants' Motion to Transfer finding a lack of minimum contacts. This case was transferred to the District of Massachusetts. A copy of the Order of transfer is annexed hereto as Exhibit A. Discovery is ongoing in this matter.

It is well-established that a federal court sitting in diversity is required to apply M.G.L. 230 § 60B. Feinstein v. Mass. Gen. Hosp., 643 F.2d 880, 885 (1st Cir. 1981). In Feinstein, supra, as in this case, a Rhode Island plaintiff appealed an Order of the District of Massachusetts Court granting defendant's Motion to Convene a Tribunal. On appeal, the First Circuit held that the defendant was entitled to a tribunal and to all of the protections of the Malpractice Tribunal Statute. Id. Therefore, as this case is indistinguishable from Feinstein, the defendants respectfully request that this Court issue an Order that a Medical Malpractice Tribunal be convened prior to the close of discovery.

Wherefore, defendant respectfully requests that this Honorable Court convene a Medical Malpractice Tribunal as soon as possible with a medical member from within Doctor Ahn's specialty of dermatology.

Respectfully submitted
Min S. Ahn, M.D. and Min S. Ahn, M.D., P.C.
by counsel,



Andrew T. Neuwirth
B.B.O. #659415
Foster & Eldridge, LLP
One Canal Park, Suite 2100
Cambridge, MA 02141

Date:

5/13/05

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
FILED
CLERK'S OFFICE

PENNY LETENDRE

2005 MAY 17 A 11: 51

v.

C.A. No. 04-199ML
DISTRICT COURT
DISTRICT OF MASS

MIN S. AHN, M.D.; JANE DOE; and
MIN S. AHN, M.D., P.C., d/b/a THE
AESTHETIC WELLNESS CENTER

MEMORANDUM AND ORDER

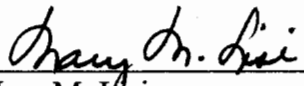
This matter is before the court on the motion to dismiss filed by the defendants Min S. Ahn, M.D. and Min S. Ahn, M.D., P.C., d/b/a the Aesthetic Wellness Center.¹ Alternatively, defendants seek transfer of this action to the United States District Court for the District of Massachusetts. In support of their motion, defendants contend that the United States District Court for the District of Rhode Island lacks personal jurisdiction over them. The plaintiff has filed an objection to defendants' motion. Additionally, the plaintiff has filed a motion for leave to conduct jurisdictional discovery. The defendants object to plaintiff's motion.

The Court has reviewed the parties' memoranda and supporting exhibits, including Dr. Ahn's affidavit of December 28, 2004, and the plaintiff's answers, dated December 1, 2004, to defendants' interrogatories. The Court concludes that it lacks personal jurisdiction over either defendant. Further, the Court concludes that it is in the interest of justice that the action be transferred to the District of Massachusetts, which both defendants concede possesses personal jurisdiction over them. 28 U.S.C. § 1631; see Cimon v. Gaffney, ___ F.3d ___, ___ n. 21, 2005 WL 552858 at *5, n. 21 (1st Cir. 2005). Moreover, the Court finds that the plaintiff has failed to demonstrate that jurisdictional discovery is warranted.

¹ The defendants seek dismissal pursuant to Fed. R. Civ. P. 12(b)(2) and 12(c). The Court considers the motion as one filed pursuant to Rule 12(c).

Accordingly, the defendants' motion to dismiss plaintiffs' complaint is denied. Pursuant to 28 U.S.C. § 1631, the matter is hereby transferred to the United States District Court for the District of Massachusetts. The plaintiff's motion for leave to conduct jurisdictional discovery is denied.

SO ORDERED.



Mary M. Lisi
United States District Judge

March 31, 2005

